

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

KENNETH L. MILLER, et al.,

Defendants.

No. 2:12-cv-184-WKS

**PLAINTIFF JANET JENKINS'S MOTION TO STAY  
ALL DISCOVERY SCHEDULE/ORDER DEADLINES**

Plaintiff Janet Jenkins moves to stay all pending deadlines under the discovery schedule/order. *See* ECF 562, 614. In support, Jenkins states the following:

1. Under the current discovery schedule/order, discovery closes in fifty-one days on March 31, 2021. *See* ECF 614. Other still-pending deadlines are tied to the close of discovery, including the deadline to serve any interrogatories and requests for production in nine days on February 17. *See* Final Modified Disc. Schedule/Order ¶¶ 1, 5–7, ECF 562.

2. The discovery schedule/order deadlines should be stayed for several reasons. *First*, Lisa Miller can now be served process, which at the very least entitles her to respond to the complaint, *see* Fed. R. Civ. P. 12(a)(1)(A)(i) (requiring answer “within 21 days after being served with the summons and complaint”), and participate in discovery, including by attending depositions, *see* Fed. R. Civ. P. 32(a)(1) (allowing use of a deposition against a party if “the party was present or represented at the taking of the deposition or had reasonable notice of it”).\*

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\* When the Court granted leave to withdraw to then-counsel for Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc. and allowed those defendants time to secure successor counsel, the parties agreed to reschedule depositions because proceeding with them would prejudice the unrepresented parties. *See* Emails Between Counsel \*2, \*4–5, ECF 454-1.

On or about January 27, 2021, Lisa Miller, who until then was a fugitive, was returned to the United States and arrested on a criminal superseding indictment filed in the United States District Court for the Western District of New York. *See United States v. Lisa Miller*, No. 1:14-cr-00175 (W.D.N.Y.); *United States v. Miller*, No. 1:21-mj-02159 (S.D. Fla.). Jenkins's counsel began preparations to serve process on Lisa Miller, who currently is incarcerated in Miami, Florida, *see Find an Inmate*, BOP, <https://www.bop.gov/inmateloc/> (last accessed Feb. 8, 2021) (search BOP Register Number 27502-509), but who was ordered transferred to the Western District of New York, *see Warrant of Removal, Miller*, No. 1:21-mj-02159 (S.D. Fla. Feb. 1, 2021), ECF 4. *See Soto Decl.* ¶ 2 (Feb. 8, 2021). Jenkins still does not know when Lisa Miller will be removed from the Southern District of Florida, when she will arrive in the Western District of New York, or how she will be transported there. *See id.*

3. *Second*, Defendant Timothy Miller has moved to disqualify Jenkins's counsel from further representation of her because of Isabella's purported objection, in an affidavit, to that further representation. *See* ECF 636. That affidavit was prepared by attorney Vincent Heuser of the firm Hirsh & Heuser, LLC who, acting with a clear conflict of interest, unethically communicated *ex parte* with Isabella, formed an attorney–client relationship, and induced Isabella to execute two affidavits and a release of all liability from Defendants, even though Heuser knew his firm represented three defendants in this case and that Isabella was at the time represented by counsel in this case through her mother and next friend, Jenkins. *See Soto–Heuser Emails \*2*, ECF 635-2. Heuser has since conceded an apparent conflict of interest and withdrawn from further representing Isabella. *See Ex. 1: Heuser Email; see also Soto–Heuser Emails \*1*. Timothy Miller objected to the parties conferring about how Lisa Miller's reappearance would affect the discovery schedule/order, instead taking the position that the parties need to discuss

how much time Jenkins needs to find new counsel. *See* Emails with Defense Counsel \*1–2, ECF 635-1. All other Defendants, except Kenneth Miller, have since concurred with Timothy’s position that Jenkins’s counsel cannot continue to represent her. *See* Ex. 2: Emails with Defense Counsel \*1–3. Jenkins’s response to Timothy’s motion is due on or before February 16. *See* L.R. 7(a)(3)(B); Fed. R. Civ. P. 6(a)(1)(C), (a)(6)(A).

4. *Third*, Deborah Bucknam, Esq. entered her appearance for Plaintiff Isabella Miller-Jenkins three days ago on February 5, 2021. *See* ECF 637. Bucknam informed Jenkins’s counsel on February 6 that Bucknam is still discussing with Isabella her various options, and Isabella has made no decisions, *see* Soto Decl. ¶ 4 (Feb. 8, 2021), notwithstanding the affidavits and release her former counsel Heuser prepared, *see* Soto–Heuser Emails \*5–11. After more than a decade as a missing person, Isabella should not be rushed or pressured into any decisions because of the upcoming discovery deadlines.

5. *Fourth*, Isabella’s reappearance might affect expert testimony in this case and might justify the designation of additional experts.

6. The parties, including Lisa Miller, could not begin to negotiate a new discovery schedule/order for the Court’s consideration, until Lisa is served process and enters an appearance and until the Court resolves whether to disqualify Jenkins’s counsel, and if so, whether to allow her time to secure successor counsel.

7. Pursuant to Local Rule 7(a)(7), Jenkins certifies that she made a good-faith attempt to obtain the parties’ agreement to the requested relief. On February 4, 2021, Jenkins’s counsel emailed Defendants’ counsel explaining the basis for this motion and asking for their positions on it by close of business on February 5. *See* Ex. 2: Emails with Defense Counsel \*8–9. Defendants Liberty Counsel, Inc., Rena Lindevaldsen, Linda Wall, Philip Zodhiates, Victoria

Hyden, and Response Unlimited, Inc. (collectively, “the RUL Defendants”) responded that they oppose this motion. *See id.* at \*5–7. Liberty Counsel, Lindevaldsen, and the RUL Defendants further responded that Jenkins cancels previously scheduled party depositions in February and March at her own risk, despite their simultaneous position that her current counsel must withdraw their appearances and she must find new counsel or proceed *pro se*. *See id.*; *cf. supra* note \*. As of this filing, Defendants Kenneth Miller and Timothy Miller did not respond regarding this motion. *See* Soto Decl. ¶ 6 (Feb. 8, 2021). Today, Jenkins’s counsel emailed Isabella’s new counsel for her position on this motion, but she has not responded as of this filing. *See id.* ¶ 7.

### CONCLUSION

Jenkins’s motion to stay all pending deadlines under the discovery schedule/order should be granted.

Respectfully submitted.

February 8, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, the foregoing document was served on the following counsel of record through the Court's CM/ECF system:

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February 8, 2021

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